

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941-BB-ACE

RIO CHAMA STREAM SYSTEM
Sections 3, 5 & 7

SCHEDULING ORDER ON IRRIGATION WATER REQUIREMENTS

This scheduling order is entered by the Special Master pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of irrigation water requirements in Sections 3, 5, and 7 of the Rio Chama Stream System.

Having considered the comments of all interested counsel at the status conferences held in Santa Fe on December 14, 2004, and in Chama on February 10, 2005, I make the following findings:

1. The procedural orders for the adjudication of water rights claims in Sections 3, 5 and 7 of the Rio Chama Stream System state that the “adjudication of irrigation water requirements and ditch-wide priority dates will be initiated by the State following the completion of the individual subfile activity.” *Procedural Order* entered July 25, 2000 (Doc. No. 5913) (Section 3: Rio Nutrias; Rio Cebolla; Canjilon Creek); *Procedural Order* entered March 15, 2000 (Doc. No. 5890) (Section 5: Rio Gallina); *Procedural Order* entered November 19, 2002 (Doc. No. 6939) (Section 7: Rito de Tierra Amarilla; Rio Brazos; Rutheron–Plaza Blanca; Cañones Creek; Village of Chama).

2. Pursuant to the Court's Administrative Order on Case Management Priorities entered on July 16, 2004 (Doc. No. 7523), the completion of primary subfile work in Sections 3, 5 and 7 of the Rio Chama Adjudication is a first priority matter. The determination of diversion and irrigation water requirements in Sections 3, 5 and 7 is a second priority.

3. Primary subfile work in Section 5 (Rio Gallina) is substantially complete. Primary subfile work in Section 3 is approximately 75 percent. Primary subfile work in Section 7 is approximately 50 percent complete.

4. The State's present position with regard to the calculation and determination of specific diversion and irrigation water requirements in Sections 3, 5 and 7 of the Rio Chama Stream System, and in each of the subsections of Sections 3 and 7, is set out in the hydrographic survey reports for those areas. These nine reports, completed between January 14, 2000 and July 31, 2003, are on file with the Court and are available for inspection at the Office of the State Engineer in Santa Fe upon request. All of these reports use the original Blaney-Criddle method (1950, 1962) for the calculation of the total consumptive use of specific crops during the growing season. Parties representing community ditches in Sections 3, 5 and 7 (the Rio Gallina-Capulin Acequia Association and the Asociación de Acéquias Norteñas de Rio Arriba) have requested that the State reevaluate its use of the original Blaney-Criddle method in the determination of irrigation water requirements in Sections 3, 5 and 7. Specifically, those parties request that the State Engineer consider as an alternative the use of the modified Blaney-Criddle method in Sections 3, 5 and 7.

5. It would be desirable to establish whether the State proposes to use the original Blaney-Criddle method in Sections 3, 5 and 7 prior to the adjudication of the weighted Consumptive Irrigation Requirement (CIR) and Farm Delivery Requirement (FDR) in Section 5 (Rio Gallina)

where individual subfile work is substantially complete. The State has agreed to make this determination.

Based on these findings, IT IS HEREBY ORDERED, that the schedule for the determination of irrigation water requirements in Sections 3, 5 and 7 shall be as follows:

(1) On or before March 11, 2005, the State shall make a determination whether it proposes to use the original or modified Blaney–Criddle method in the determination of the consumptive use of crops in Sections 3, 5 and 7, and shall serve (but not file) a proposed joint stipulation to that effect on the Gallina–Capulin Acequia Association (representing community ditches in Section 5), the Asociación de Acéquias Norteñas de Rio Arriba (representing community ditches in Sections 3 and 7) and the Jicarilla Apache Nation. Counsel for the Rio Chama Acequia Association, Fred J. Waltz, shall receive a copy of the proposed stipulation, and thereafter shall be included in any discussions or negotiations between the parties on this issue at his request. Any stipulation between the State, the Acequia Associations in Section 3, 5 and 7, and the Jicarilla Apache Nation concerning use of either the original or modified Blaney–Criddle method shall have no effect upon the determination of irrigation water requirements for ditches in Section 1 represented by the Rio Chama Acequia Association or ditches in Sections 2 and 4 subject to the stipulation and settlement agreement filed September 17, 1998 (Doc. No. 5824). *See also* Order filed January 7, 1999 (Doc. No. 5839).

(2) The State, the Gallina–Capulin Acequia Association, the Asociación de Acéquias Norteñas de Rio Arriba, and the Jicarilla Apache Nation shall report to the Special Master at the scheduled Rio Chama status conference on April 12, 2005, whether they anticipate that litigation

proceedings will be necessary to resolve any issue of whether the original or modified Blaney–Criddle method should be used in the determination of the consumptive use of crops in Sections 3, 5 and 7.

(3) On or before March 18, 2005, the State shall serve (but not file) its specific proposal for the weighted Consumptive Irrigation Requirement (CIR) and Farm Delivery Requirement (FDR) in Section 5 (Rio Gallina) on the community acequias in Section 5 (“Section 5 Acequias”).

(4) On or before March 25, 2005, the State and the Section 5 Acequias shall meet pursuant to Fed. R.Civ. P. 26(f) and shall make mutual initial disclosures pursuant to Fed. R.Civ. P. 26(a)(1).

(5) The State and the Section 5 Acequias shall report to the Special Master at the scheduled Rio Chama status conference on April 12, 2005 whether they anticipate that litigation proceedings will be necessary to determine the irrigation water requirements (CIR & FDR) in Section 5, or whether the State and the Section 5 Acequias will be able to reach an agreement on these issues.

(a) If the State and the Section 5 Acequias report that they are able to reach an agreement on the issue of irrigation water requirements (CIR & FDR), the State shall thereafter prepare proposed Orders for the Section 5 Acequias that list the pertinent water rights information for each ditch including: point of diversion, source of water, description of irrigated tracts, ditch priority date, CIR and FDR. The adjudication of irrigation water requirements on an *individual* basis shall thereafter be initiated by the State by a motion for an order to show cause why the Court should not adopt with respect to each subfile the irrigation water requirements stated in the Orders entered and agreed upon with respect to each ditch.

(b) If the State and the Sections 5 Acequias report that they are unable to reach an agreement on the issue of irrigation water requirements, the Special Master shall schedule a conference under Rule 16(b) for the purpose of entering a pretrial order setting forth procedures for further discovery and trial.

(6) The determination of specific irrigation water requirements (CIR & FDR) in Sections 3 and 7 will be scheduled once primary subfile work in these sections is substantially complete.

(7) The determination of CIR & FDR in Sections 3, 5 and 7 shall have no effect upon the determination of irrigation water requirements for ditches in Section 1 represented by the Rio Chama Acequia Association, or ditches in Sections 2 and 4 subject to the stipulation and settlement agreement filed September 17, 1998 (Doc. No. 5824). *See also* Order filed January 7, 1999 (Doc. No. 5839).

(8) A determination of the Project Diversion Requirement (PDR) for any of the individual ditches in Sections 3, 5 and 7 will be scheduled only after the determination of the stockwatering rights and any other water rights that may be associated with each ditch.

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SPECIAL MASTER VICKIE L. GABIN